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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,322	12/10/1999	STEPHEN J. ZACK	SEDN/198	8722

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EXAMINER
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HUYNH, SON P

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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06/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/458,322

Applicant(s)

ZACK ET AL.

Examiner

Son P. Huynh

Art Unit

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 32-44.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
SCOTT E. BELMEAU  
PRIMARY PATENT EXAMINER

Continuation of 3. NOTE: Applicant's amendments to the claims such as deleting the words "that is adapted" in the independent claims 32 and 44 changes the scope of the claims (narrower the scope of the claims) and requires further consideration and/or search.

Applicant argues Mao teaches away from the approach of Wu because Mao discloses HPAT is required to located the other two tables... Thus, applicant submit that not only is there no motivation to combine the teachings of Mao with Wu, but the resulting combination would not have worked as intended by Mao there is no motivation to combine Mao with Wu (page 6). This argument is respectfully traversed.

Mao merely discloses the tables in the control map permit the user to navigate among the HTML pages in the rotation carousel at the receiving site. Mao, nowhere, prohibits or teaches away from "multiplexing of formatted non-content data on the future bandwidth availability basis". In fact, Mao discloses formatted non-content data (e.g., web page data, advertisement, channel information, etc. is formatted to fit within the standard MPEP-2 data packet structure) is multiplexed with other MPEG-2 digital video signals for transport within a multiple channel digital video system (col. 3, lines 20-41, col. 6, line 15-col. 7, line 18). However, Mao does not explicitly disclose the non-content data is multiplexed on a future bandwidth availability basis. The Examiner relies on Wu for the teaching of this feature. Therefore, Mao does not teach away from Wu's approach of providing opportunistic data based on available bandwidth.

With respect to applicant's argument that there is no motivation to combine the teachings of Mao with Wu, the examiner recognizes that obviousness/motivation can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine Mao with Wu is found in the references themselves (see paragraph 1, page 9 of the Office Action dated 03/16/2007- herein after referred to as OA). Specifically, Mao discloses a system comprising server equipment (e.g. head end 10 - figure 1) for providing television program content and auxiliary data (e.g., Internet data, advertisement, or channel information, etc.). The television program content and auxiliary data are multiplexed together for providing as transport to the subscriber equipment (e.g. television, or set top box) via a communication channel. The multiplexed signal broadcasted to user television equipment using MPEG-2 (see include, but are not limited to, figures 1-2, 4-5, 8, col. 6, line 15-col. 7, line 18). Wu also discloses a system comprising server equipment (figure 1) for providing television program content (television signal/encoded data) and auxiliary data (opportunistic data). The television program content and auxiliary data are multiplexed together for providing as transport to the receiving equipment (user equipment connected to receive MPEG-2 transport stream -figure 1) via a communication channel. The multiplexed signal provided to the receiving equipment using MPEG-2 standard (see include, but are not limited to, figure 1, col. 2, lines 7-30, col. 4, line 6-col. 5, line 19). Wu further discloses "multiplexing of content streams is statistically perform", and "selectively multiplexing of formatted non-content data is on a future bandwidth availability basis that is predicted based on the multiplexing of the formatted content streams" (see OA, pages 8-9). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mao to use the teaching as taught by Wu in order to maximize bandwidth utilization and provide cost saving and minimizes disruption to the existing encoders in the field (col. 3, lines 59-61). Therefore, motivation to combine Mao with the teachings of Wu is for the benefits discussed above. For reasons given above, the combination of Mao with the teaching of Wu is proper.

Applicant further argues unlike Applicant's invention, the multiplexed output from HSLSC 26 received by transport stream 12 is not for transport to the subscribers. Instead, the multiplexed output from HSLSC 26 is transported by transport system 12 to other transport systems 14 or 16, but not to subscribers. Even though O'Loughlin shows bidirectional communication between the various components, the data being transported from HSLSC 26 (or alternatively, LSCSC 18, 24) to the consumers or subscribers is demultiplexed data, which is different from multiplexed output stream in Applicant's claims 32 or 40 (pages 7-8).

In response, these arguments are respectfully traversed.

claim 32 or 40 recites "...to produce an output stream for transport to the subscriber equipment via a communication channel". Thus, neither claim 32 nor claim 40 recites the multiplexed output stream is received at the subscriber equipment.

The limitation "multiplex switch for multiplexing a plurality of formatted content data from server modules to produce an output stream that is adapted for transport to the subscriber equipment" is already taught by Mao (see OA, page 7).

Alternatively, O'Loughlin discloses the multiplexed output stream is transmitted to data transport system for transport to the consumer equipment coupled to the transport system (see include, but are not limited to, figures 1-5, col. 6, line 52-col. 9, line 54). Thus, O'Loughlin discloses of multiplexor multiplexing a plurality of data from servers 44, 50 to produce an output stream to transport system and the data in the output stream is later provided to the consumer is broadly read on "multiplexing... to produce an output stream for transport to the subscriber equipment".

O'Loughlin further disclose a "transport processor coupled..." as discussed in OA, pages 5, 9.

Therefore, the combination of Mao, Wu, and O'Loughlin is read on the limitations as claimed (see also discussed in the OA, page 4, paragraph 3-page 5, paragraph 4).

For the reasons given above, rejections on claims 32-44 are maintained as discussed in the rejections of the OA..